

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1747 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : YES
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

DEPUTY EXECUTIVE ENGINEER

Versus

JIVIBEN V PANDYA

Appearance:

MS SEJAL K MANDAVIA for Petitioner

MR.DM THAKKAR for Respondent.

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 16/06/2000

CAV JUDGEMENT

Learned Advocate Ms. Sejal K. Mandavia
appearing on behalf of the petitioner and Learned
Advocate Mr. D.M.Thakker appearing on behalf of the
resondent. Rule Mr.D.M.Thakker Learned Advocate on

behalf of respondent is waiving the service of rule. With the consent of both the Learned Advocates, the matter has been taken up for final hearing today. In the present petition, the award passed by the Labour Court, Surat in Reference No.266 of 1985 dated 8.10.1998 has been challenged wherein, the Labour Court, Surat has granted reinstatement with continuity of service with full back wages of interim period. Brief facts leading to the filing of the present petition are that the respondent was appointed as a Clerk cum Typist with effect from 1.3.1982 on 29 days' basis and one or two days' artificial breaks were given and she remained in service up to 31.10.1983 and her service was terminated on 1.11.1983. The said termination order was challenged by the respondent-workman before the Labour Court, Surat in Reference No. 266 of 1985 which has been decided by the labour court on 8.10.1998 granting reinstatement in favour of the respondent workman with full back wages for intervening period and all consequential benefits with continuity of service. The statement of claim was filed by the respondent-workman and reply was submitted by the petitioner. In paragraph 8 of the award, the labour court has considered the details of working days of the respondent workman and has, in terms, come to the conclusion that the respondent workman has completed 240 days' continuous service within last 12 months preceding the date of termination of her services within the meaning of Sec. 25-B of the Industrial Disputes Act,1947. The labour Court has, therefore, in terms come to the conclusion that the petitioner has violated the provisions of Section 25-F of the Industrial Disputes Act,1947. The labour court has concluded that before terminating her services, the petitioner has neither served the respondent with any notice or notice pay in lieu of notice and has also not paid any retrenchment compensation to her. In view of such conclusion, the labour court has granted reinstatement in favour of the respondent workman as stated above which has been challenged by the petitioner before this court.

I have heard the learned advocates for the parties. Learned advocate Ms. Mandavia has submitted that the periodical appointment cannot be considered to be the retrenchment in view of the provisions of section 2 (oo) (bb) of the ID Act. Such contention is not well founded and the same is not acceptable for the simple reason that the amendment of section 2(oo) in the Statute by amending 2(bb) came into effect from 18th August, 1984 and such amendment in the Section has no retrospective effect as held by the division bench of this Court in case of Bharat Heavy Electricals Ltd. versus

R.V.Krishnarao reported in 1989 (2) GLH page 1. In this case, the service of the respondent was terminated on 1.11.1983 whereas the said amendment has come into effect from 18.8.1984 and, therefore, the petitioner cannot raise such contention and as such, such a contention raised by Ms.Mandavia cannot be accepted. The findings reached by the labour court are the findings of fact which cannot be interfered with by this court while exercising the powers under Article 226 and/or 227 of the Constitution of India. In view of the decision of the apex court in case of Management of M.C.D. versus Premchand Gupta and others reported in AIR 2000 SC page 454, the directions given by the labour court while setting aside the order of termination to reinstate the respondent workman in service with continuity of service with all consequential benefits is not required to be disturbed and the same is required to be confirmed.

Learned advocate Ms.Mandavia has submitted that in all, the respondent workman has worked for a period of about one and half year and in the year 1983, on 1.11.1983, she was discharged. The dispute was raised and referred to on 20.10.1985 and the reference remained pending before the labour court for about 13 years or so and the labour court delivered the impugned award on 8.10.1998 and, in view of these facts, the labour court should not have granted full back wages while reinstating the respondent workman. She has submitted that the petitioner is a public body and is State authority within the meaning of Article 12 of the Constitution of India and, therefore, the labour court ought not to have granted back wages while awarding reinstatement in her favour. Learned advocate Mr.Thakkar appearing for the respondent workman has not seriously disputed this submission made by Ms. Mandavia as regards back wages and has left the same at the discretion of this Court.

Now question is required to be examined so far relating to the question of granting full back-wages of interim period as directed by the Labour Court. In the present case the termination was dated 1.11.1983. Date of reference is dated 20.10.1985 and date of award is 8th October, 1998. The net result is that a respondent who has worked about one and half year with petitioner is entitled to the the salary of about 13 years without having worked for the intervening period. Whether in such circumstances, the full back wages can be granted or not is the question which requires consideration. The reference has remained pending before the Labour Court for final decision for a period of about 13 years. Petitioner is a public body and State Authority.

Respondent was not a permanent workman. The Apex Court has considered similar situation in case of H.M.T. Limited v. The Labour Court Ernakulam and Others reported in 1994(2) C.L.R. page-22. In the said decision, the Apex Court has confirmed the orders passed by the High Court upholding the award passed by the labour court reinstating the workman. However, the apex Court has taken into consideration the period which has elapsed in between and has held that no party should be made to suffer on account of delay in decision by the Court. In the said decision, taking into consideration the delay which has occurred in disposal of the reference, the apex court has reduced the back wages to the tune of 60% instead of 100 % as has been granted by the labour court and confirmed by the High Court.

Similarly, recently such question has been examined by the Apex Court in the case of Management of M.C.D. Vs. Premchand Gupta reported in AIR 2000 S.C. Page 454. The Apex Court has observed that the reason for not granting full back wages from the date of his termination i.e. 29/4/1966 till the actual reinstatement pursuant to the present order can now be indicated. Firstly, for no fault of the contesting parties, the litigation has lingered for more than 3 decades. To saddle the petitioner and its Exchequer which is meant for public benefit with full back wages for the entire period would be too harsh to the petitioner. It is delay in disposal of cases in the Courts that has created this unfortunate situation for both the sides. The respondent workman is also not at fault as she was clamouring for justice for all these years. However, this delay in courts proceedings for no fault of either sides permits us not to burden the petitioner being a public body with full back wages for the entire period of respondent workman unemployment especially when no fault of either side actual work could not be taken from the respondent workman by the petitioner. It is true that the respondent workman was always willing to work but she was not be permitted to work so long as the termination order stood against her. All these factors together point in the direction of not saddling the petitioner, a public body with the burden of entire full back wages to be granted to the respondent workman after the passage of 33 years since the date of termination of her services. The second reason is that the respondent workman for all these years could not have remained totally unemployed though there is not clear evidence that she was gainfully employed and was so well off that she should be denied complete back wages but keeping in view the fact that for

all these long years fortunately the respondent workman had survived and has still 2 more years to reach the age of superannuation as we are told not granting her full back wages on the peculiar facts and circumstances of this case would meet the end of justice. The petitioner shall reinstate the respondent workman with continuity of service within 8 weeks from today and still also pay 50% back wages from the date of termination till her actual reinstatement in service of the petitioner with continuity of service.

In light of the observations made by the Apex Court in two above referred cases, in the present case the termination of respondent workman was 1st November, 1983, she completed more than one and half years service. She was not a permanent employee. She raised dispute against the termination after the period of 2 years. The petitioner is a public body and state authority. The 13 years period has been passed in taking decision by the Labour Court in reference. Considering all these aspects and observations made by the Apex Court if the back wages for the period from the date of termination to date of reference is not granted to the respondent workman because of inaction on the part of the respondent workman not to raise dispute immediately after the termination, therefore respondent workman is not entitled to back wages from the date of termination i.e. 1st November, 1983 to the date of reference i.e. 20th October, 1985 and respondent workman is entitled to 60% back wages from the date of reference i.e. 20th October, 1985 to 8th October, 1998, date of award and full back wages from the date of award till the date of actual reinstatement. If such direction will be given in respect to the back wages of interim period which will meet the ends of justice between the parties.

Therefore, the award passed by the Labour Court, Surat in reference No.266 of 1985 dated 8th October, 1998 is modified qua back-wages as under confirming the direction of granting reinstatement with continuity of service.

The respondent-workman is not entitled any back-wages from the date of termination 1st November, 1983 to 20th October, 1985 and entitled the 60% back-wages from the date of reference 20th October, 1985 till the date of award 8th October, 1998 and full wages from date of award 8th October, 1998 till the date of actual reinstatement. Therefore, the award of granting full back wages by the Labour Court is modified as above.

Therefore, present petition is partly allowed. Rule made absolute to that extent and it is directed to the petitioner to reinstate the respondent-workman with continuity of service with all consequential benefits as if, respondent-workman was deemed to be in service through out within a period of six weeks from the date of receiving the certified copy of this order. It is further directed to the petitioner to pay 60% back wages to the respondent-workman from the date reference 20th October, 1985 to the date of award 8th October, 1998 and it is further directed to pay full wages to the respondent-workman from the date of award 8th October, 1998 till the date of actual reinstatement within a period of eight weeks from the date of receiving certified copy of this order. It is further declared that respondent-workman is not entitled any amount of back wages from the date of termination 1st November, 1983 till the date of reference 20th October, 1985.

In view of the present petition is partly allowed. Rule made absolute to that extent. No order as to costs.

Date : 16-06-2000. (H.K.RATHOD, J.)

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